

DOCUMENT RESUME

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[Reconsideration of Protest of Noncompliance with Contract Specifications]. B-187552. September 16, 1977. 4 pp.

Decision re: Eorg-Warner Health Products, Inc.; by Robert F. Keller, Acting Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel: Procurement Law II.
Budget Function: General Government: Other General Government (806).

Organization Concerned: Joerns Furniture Co.; Department of the Army: Walter Reed Army Medical Center.

Authority: E-187705 (1977). B-188197 (1977). B-179719 (1974).
B-182890 (1975).

The petitioner requested reconsideration of a decision denying a protest against the award of a Federal Supply Schedule contract. In determining the lowest schedule price, the using agency was not required to allow Federal Supply Schedule vendors the opportunity to reduce their prices by eliminating standard features of their commodities. The prior decision that the offeror's compliance with specifications concerned contract administration was affirmed. (Author/SC)

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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-187552

DATE: September 16, 1977

MATTER OF: Borg-Warner Health Products,
Inc.--Reconsideration

DIGEST:

1. Where multiple award Federal Supply Schedule (FSS) listed two categories of beds, those with removable headboards and footboards, and those without, vendor manufacturing beds with only removable headboards could choose to list its item under either category. Using agency may award contract to vendor where its minimum needs are met by its bed.
2. In determining lowest schedule price, using agency is not required to allow FSS vendors the opportunity to reduce their prices by eliminating standard features of their commodities since to do so could lead to auction procedures and destroy FSS concept by allowing elements of price to be negotiated over multitude of items.
3. Prior decision that offeror's compliance with specifications concerns contract administration is affirmed.

Borg-Warner Health Products, Inc. (Borg-Warner) has requested reconsideration of our decision dated July 21, 1977, 77-2 CPD ___ denying its protest of a purchase order issued by the Walter Reed Army Medical Center to Joerns Furniture Company (Joerns) for hospital room furniture consisting of electric and manual hospital beds and over bed tables.

Borg-Warner first contends that we failed to address the significance of the fact that Joerns is not a commercial producer of the items called for under its Federal Supply Schedule (FSS) contract and, therefore, cannot

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supply the items for which the purchase order was issued. It argues that because we failed to recognize the significance of this fact, our decision abrogates the underlying principle of the Federal Supply System that the supplier be a commercial manufacturer of the items for which it is listed. Borg-Warner explains its position by noting that we found that Joerns did not produce the precise item called for in Joerns' FSS contract, i.e., manual beds with headboards and footboards removable without tools.

In our decision we noted that when the FSS was established no specific category was designated for beds with headboards that were removable without tools but footboards that were not. Bidders manufacturing these items had to choose between two categories neither of which accurately described their product (both headboards and footboards removable without tools or both not removable without tools). We asked the General Services Administration (GSA) to comment on the matter, and it stated that the intent of the item description in a multiple award schedule was to identify, as closely as practicable, comparable items of the particular commodity so that the user agency could tell what contractors were available to supply which commodities. It was GSA's position that the supplier in the instant situation could choose the category where its beds best fit. Moreover, GSA pointed out that even if the Joerns manual beds appeared in the wrong category, the error concerned solely the necessary footboard and did not affect the validity of the FSS contract or the WRAMC purchase order. We found no reason to disagree with GSA's views. While Borg-Warner on reconsideration continues to argue that Joerns was not a proper supplier of the items called for under its FSS contract, we see no reason to alter our position on the matter.

Borg-Warner also contends that the decision should have addressed the issue that, when selecting Joerns' equipment, WRAMC disregarded one of the documented criteria (removable head and footboards) WRAMC established for evaluating each contractor's equipment. Borg-Warner refers to the fact that WRAMC prepared what was labeled

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"General Specifications," Item 17 of which stated "Removable headboards and footboards." Borg-Warner also notes that as late as August 23, 1976, WRAMC may have been evaluating offerors' beds against a criterion stating, "Headboards and footboards should be removable without the use of tools, but should not be so loosely mounted as to come off when pushing or pulling the bed by the headboard or footboard." WRAMC responded by pointing out that as of June 18, 1976, the nursing staff, as evidenced by a memorandum of that date, did not consider removable footboards to be an essential requirement. Borg-Warner disagreed with the interpretation given by WRAMC to that memorandum and argued that the face of the memorandum specifically stated that the listed criteria were to be used "in addition to the existing general specification for electric beds" which, as we noted, contained Item 17. Borg-Warner also alleged that the contracting officer informed Borg-Warner that he was under the impression that both the head and footboards on Joerns' manual beds were removable without tools prior to placing the order with Joerns.

Even assuming, however, that the contracting officer thought that the Joerns' beds had removable head and footboards, Borg-Warner has not shown that Joerns' equipment did not meet the Government's minimum needs. In fact, WRAMC stated that it did not need manual beds with footboards removable without tools. We see no reason to disagree with the using agency's statement of its minimum needs.

Next Borg-Warner notes that the decision did not discuss WRAMC's reasons for rejecting Borg-Warner's Model 7 bed. In the decision we found that Joerns' equipment, assuming the validity of all but one of Borg-Warner's bases for a lowered price evaluation, was \$4,231 lower in price than was Borg-Warner's. With respect to the remaining basis for lowering Borg-Warner's evaluated price, we found that Borg-Warner could not take advantage of a lowered price evaluation for equipment it did not offer. This rendered academic our consideration of the reasons why WRAMC found Borg-Warner's Model 7 bed unacceptable. In effect, we agreed with WRAMC that in determining the lowest schedule price the using activity is not required to allow FSS vendors the opportunity to reduce

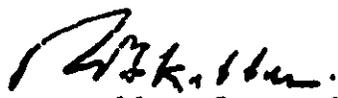
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their prices by eliminating standard features of their commodities. As WRAMC pointed out, such a practice could not only create an auction procedure, but also could destroy the schedule concept by allowing major elements of the price to be determined by vendor-user negotiations over a multitude of items. Our position remains unchanged.

Finally, Borg-Warner contends that we erred as a matter of law in our conclusion that Borg-Warner's allegation as to the electrical safety of Joerns' equipment is a matter to be resolved in the administration of Joerns' FSS contract. We held that there was nothing on the face of Joerns' offer to indicate that it did not intend to comply with the requirements as to electrical safety contained in GSA's request for proposals. Borg-Warner's argument is that regardless of any representation on Joerns' part, Joerns' equipment cannot meet the specifications. As we stated in Julian A. McDermott Corporation, B-187705, B-188197, April 18, 1977, 77-1 CPD 266:

"The question of whether or not the items actually supplied by Audi under the contract complied with the specifications is a question of contract administration. See Edward E. Davis Contracting, Inc., B-179719, January 20, 1974, 74-1 CPD 37. Matters of contract administration are not for resolution under our bid protest procedures which are reserved for considering whether an award, or proposed award, of a contract complies with statutory, regulatory, and other legal requirements. See, Inter-Alloys Corporation, B-182890, February 4, 1975, 75-1 CPD 79. These matters, rather are the responsibility of the contracting agency."

Accordingly, our decision of July 21, 1977 is affirmed.


Acting Comptroller General
of the United States